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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 NICANOR MEJIA GARCIA,)
10) CASE NO. C09-96-MJP-MAT
Petitioner,)
11)
v.) ORDER DENYING RESPONDENTS'
12) MOTION FOR RECONSIDERATION
ERIC H. HOLDER, JR., Attorney General of)
13 the United States, et al.,)
14)
Respondents.)

15 This matter comes before the Court on respondents' Motion for Reconsideration. (Dkt.
16 33). Respondents asks the Court to reconsider its previous Order granting petitioner's motion to
17 compel discovery, Dkt. 32, based on new evidence that petitioner was released on his own
18 recognizance on May 4, 2009. (Dkt. 33, Exs. A & B). Respondents assert that because
19 petitioner is no longer detained by the U.S. Immigration and Customs Enforcement ("ICE"), his
20 habeas petition has become moot and should be dismissed. *Id.* Respondents assert that because
21 petitioner's habeas petition has become moot, his motion to compel discovery should now be
22 denied. *Id.* Petitioner responds that he never requested release from detention, but instead
23 "seeks the performance of a contract ratified by the government for lawful permanent resident
24 status in exchange for cooperation in a criminal investigation." (Dkt. 36 at 1).

1 Having reviewed respondents' motion, petitioner's response, and the remainder of the
2 record, this Court hereby finds and ORDERS:

3 (1) Respondents' Motion for Reconsideration (Dkt. 33) is DENIED. By local rule,
4 motions for reconsideration are disfavored and the court will ordinarily deny such a motion in
5 the absence of "a showing of manifest error in the prior ruling or a showing of new facts or legal
6 authority which could not have been brought to its attention earlier with reasonable diligence."
7 W.D. Wash. Local Rule CR 7(h).

8 The habeas corpus statute provides that "the writ of habeas corpus shall not extend to a
9 prisoner unless . . . he is in custody under or by color of the authority of the United States . . ."
10 28 U.S.C. § 2241. The federal courts have held that a person released on his own recognizance
11 is 'in custody' for purposes of the habeas corpus statute. *Hensley v. Municipal Court*, 411 U.S.
12 345, 351(1972). *See also Williams v. INS*, 795 F.2d 738, 744 n.3 (9th Cir. 1986) (extending the
13 Supreme Court's holding in *Hensley* to habeas petitions in the immigration context). Although
14 petitioner is not in physical custody, his immigration proceedings are ongoing and petitioner is
15 required to appear at his removal hearing in Seattle, Washington on June 9, 2009. (Dkt. 36, Ex.
16 A). Accordingly, the Court finds that petitioner remains "in custody" for purposes of the habeas
17 corpus statute and that his habeas corpus petition is not moot.

18 (2) Respondents shall answer the outstanding discovery requests by June 12, 2009.

19 (3) The Clerk shall re-note respondents' motion to dismiss for consideration on August
20 10, 2009.

21 (4) The Clerk shall forward a copy of this Order to all counsel of record.

22 DATED this 3rd day of June, 2009.

23 s/ Mary Alice Theiler
24 United States Magistrate Judge
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